

**REMARKS**

Claims 1-7 are pending in the application.

Claims 1-7 have been rejected.

Claims 1 and 6 have been amended, as set forth herein.

New Claims 28-32 have been added.

I. **DRAWINGS**

Applicant is submitting a new replacement sheet for Figures 1 and 1A showing reference numeral 14 in Figure 1, as requested by the Office Action.

II. **SPECIFICATION**

Applicant has amended the Abstract, as requested by the Office Action.

III. **REJECTION UNDER 35 U.S.C. § 102**

Claims 1 and 3-7 were rejected under 35 U.S.C. § 102(b) as being anticipated by Johnson (US 5,285,612). The rejection is respectfully traversed.

A cited prior art reference anticipates the claimed invention under 35 U.S.C. § 102 only if every element of a claimed invention is identically shown in that single reference, arranged as they are in the claims. MPEP § 2131; *In re Bond*, 910 F.2d 831, 832, 15 U.S.P.Q.2d 1566, 1567 (Fed. Cir. 1990). Anticipation is only shown where each and every limitation of the claimed invention is

found in a single cited prior art reference. MPEP § 2131; *In re Donohue*, 766 F.2d 531, 534, 226 U.S.P.Q. 619, 621 (Fed. Cir. 1985).

Applicant has amended independent Claims 1 and 6 to recite that the channel (channel portion) has a depth sufficient such that when the wale is secured to a retaining wall by a tieback rod and a fastener, the tieback rod and said fastener do not protrude from the channel (channel portion). Support of this element/feature can be found in the Specification, page 5, paragraph 0033. Johnson fails to disclose this element/feature.

Accordingly, the Applicant respectfully requests the Examiner withdraw the § 102(b) rejection of Claims 1 and 3-7.

#### IV. REJECTION UNDER 35 U.S.C. § 103

Claim 2 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Johnson (US 5,285,612). The rejection is respectfully traversed.

For the same reasons as set forth above in response to the 102 rejection, Johnson does not disclose, teach or suggest the Applicant's claimed invention as recited in amended Claims 1 and 6 (and dependent Claims).

Accordingly, the Applicant respectfully requests withdrawal of the § 103(a) rejection of Claims 2.

V. NEW CLAIMS 28-32

Applicant has added new independent Claim 28 (and dependent Claims 29-32). Claim 28 generally recites that (1) the back wall has an opening therein and operable for receiving a tieback rod therethrough, and (2) the front wall has an opening therein and operable for receiving the tieback rod therethrough. Support for these feature(s)/elements(s) can be found in Figure 1A and the Specification, page 5, paragraph 0035. Johnson does not disclose such feature(s)/element(s).

VI. CONCLUSION

As a result of the foregoing, the Applicant asserts that the remaining Claims in the Application are in condition for allowance, and respectfully requests an early allowance of such Claims.

If any issues arise, or if the Examiner has any suggestions for expediting allowance of this Application, the Applicant respectfully invites the Examiner to contact the undersigned at the telephone number indicated below or at *rmccutcheon@davismunck.com*.

The Commissioner is hereby authorized to charge any additional fees connected with this communication or credit any overpayment to Davis Munck Deposit Account No. 50-0208.

Respectfully submitted,

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